

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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NICK SPITHOGIANIS, :  
  
Plaintiff, : 07 Civ. 4609 (PAC)  
  
-against- : ORDER  
  
YUSEF HAJ-DARWISH, NASHWA DARWISH, :  
NADAN AL DALLAL, MOUTAZZ HAJ DARWISH, :  
PAUL M. VALLERA, and ADAM T. RODMAN, :  
  
Defendants. :

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**HONORABLE PAUL A. CROTTY, United States District Judge:**

Pro Se Plaintiff Nick Spithogianis commenced this action on May 31, 2007 against Dr. Yusef Haj-Darwish, Nashwa Jaber (named in the Complaint as “Nashwa Darwish”), Nadan Al Dallal, Moutazz Haj Darwish, Paul M. Vallera, and Adam T. Rodman (collectively “Defendants”), for: (1) breach of contract, (2) fraud, and (3) other wrongs allegedly committed by Dr. Haj-Darwish and certain of his family members in connection with a business venture jointly owned by Dr. Haj-Darwish and Plaintiff. Plaintiff also charges Defendants Vallera and Rodman, Dr. Haj-Darwish’s medical associates, with tortious interference in connection with an agreement between Plaintiff and Dr. Haj-Darwish. Dr. Haj-Darwish has moved pursuant to Federal Rules of Civil Procedure (“Rule(s)”) 12(c) and 12(h)(3), and Ms. Jaber has moved pursuant to Rules 12(b)(1), 12(b)(2), and 12(b)(6), to dismiss the Complaint. Defendants Haj-Darwish and Jaber further move for sanctions pursuant to Rule 11.

This case was referred to United States Magistrate Judge James C. Francis IV, who issued his Report and Recommendation (“R & R”) on January 7, 2008. Magistrate Judge Francis recommended dismissal of the Complaint, but denial of Rule 11 sanctions. Magistrate Judge

Francis further recommended that the claims against the remaining Defendants be dismissed without prejudice pursuant to Rule 4(m). The R & R provided ten days for written objections, pursuant to 28 U.S.C. § 636(b)(1) and Rules 72(b), 6(a), and 6(e). No objections have been filed.

For the reasons set forth below, Defendants' motion to dismiss is granted, but the motion for sanctions is denied.

### **DISCUSSION**

"To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record." Wilds v. United Parcel Serv., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003). Upon review and analysis, the Court finds no clear error and agrees with the determination of Magistrate Judge Francis that: (1) Plaintiff has not alleged any recoverable damages resulting from the breach of contract claims (R & R 11-13); (2) Plaintiff has not adequately pleaded a cause of action for fraud (R & R 15); and (3) Plaintiff's claims for wages, expenses, and lease payments do not state cognizable causes of action (R & R 17-19). In addition, the Court concurs with Magistrate Judge Francis's determination that Rule 11 sanctions are inappropriate (R & R 22). Accordingly, the Court accepts and adopts the Report and Recommendation as its opinion.

### **CONCLUSION**

Dr. Haj-Darwish's motion for judgment on the pleadings is GRANTED, Ms. Jaber's motion to dismiss for failure to state a claim is also GRANTED, and Defendants' motion for Rule 11 sanctions is DENIED.

With respect to the remaining Defendants, the time for service expired on September 28, 2007, 120 days after the Complaint was filed. Fed. R. Civ. P. 4(m). The failure to serve them within the parameters of Rule 4 warrants DISMISSAL without prejudice.

Finally, the parties did not file objections to the Report and Recommendation, as they were required to do in order to preserve their right to appeal. Pursuant to U.S.C. § 1915(a)(3), I find that any appeal from this order would not be taken in good faith.

The Clerk of Court is directed to terminate all pending motions and close this case.

Dated: New York, New York  
March 3, 2008

SO ORDERED

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PAUL A. CROTTY  
United States District Judge

Copies mailed to:

Nick Spithogianis  
806 117<sup>th</sup> Street  
College Point, NY 11356

Louise Sommers, Esq.  
Miller Korzenik Sommers, LLP  
488 Madison Avenue, 11<sup>th</sup> Floor  
New York, NY 10022

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Dated: New York, New York  
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SO ORDERED

  
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PAUL A. CROTTY  
United States District Judge

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